



BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 300 and 600**

**[Docket No. 150507434-5999-01]**

**RIN 0648-BF09**

**Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import**

**Monitoring Program**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), this proposed rule would establish filing and recordkeeping procedures relating to the importation of certain fish and fish products, in order to implement the MSA's prohibition on the import and trade, in interstate or foreign commerce, of fish taken, possessed, transported or sold in violation of any foreign law or regulation. The information to be filed is proposed to be collected at the time of entry, and makes use of an electronic single window consistent with the Safety and Accountability for Every (SAFE) Port Act of 2006 and other applicable statutes. Specifically, NMFS proposes to integrate collection of catch and landing documentation for certain fish and fish products within the government-wide International Trade Data System (ITDS) and require electronic information collection through the Automated Commercial Environment (ACE) maintained by the Department of Homeland Security, Customs and Border Protection (CBP). Under these procedures, NMFS would require an annually renewable

International Fisheries Trade Permit (IFTP) and specific data for certain fish and fish products to be filed and retained as a condition of import to enable the United States to exclude the entry into commerce of products of illegal fishing activities. The information to be collected and retained will help authorities verify that the fish or fish products were lawfully acquired by providing information that traces each import shipment from point of harvest to entry-into commerce. The rule will also decrease the incidence of seafood fraud by collecting information at import and requiring retention of documentation so that the information reported (e.g., regarding species and harvest location) can be verified. This proposed rule stipulates the catch and landing data for imports of certain fish and fish products which would be required to be submitted electronically to NMFS through ACE and the requirements for recordkeeping concerning such imports.

**DATES:** Written comments must be received by *[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*. Public webinars will take place from 3:00 to 5:00 p.m. eastern standard time on February 18 and 24, 2016. An in-person public listening session will be held in Boston, Massachusetts from 11:00 a.m. to 1:00 p.m. eastern standard time on March 7, 2016.

**ADDRESSES:** Written comments on this action, identified by NOAA-NMFS-2015-0122, may be submitted by either of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to *<http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0122>* , click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Mark Wildman, International Fisheries Division, Office for International Affairs and Seafood Inspection, NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Enter N/A in the required fields if you wish to remain anonymous. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (PDF) formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the NOAA Fisheries Office for International Affairs and Seafood Inspection and by e-mail to *OIRA Submission@omb.eop.gov* or fax to (202) 395-7285.

Information on how to participate in the February 18 and 24, 2016 public webinars will be posted online at [www.iuufishing.noaa.gov](http://www.iuufishing.noaa.gov). The March 7, 2016 public listening session will take place at the Seafood Expo North America, Boston Convention and Exhibition Center, Room 104A, 415 Summer Street, Boston, MA 02210. All information about these public information sessions will be posted online at [www.iuufishing.noaa.gov](http://www.iuufishing.noaa.gov).

### **Special Accommodations**

The March 7, 2016 public listening session is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mark Wildman, at (301) 427-8350, at least 5 days prior to the meeting date.

**FOR FURTHER INFORMATION CONTACT:** Mark Wildman, Office for International Affairs and Seafood Inspection, NOAA Fisheries (phone 301-427-8350, or e-mail [mark.wildman@noaa.gov](mailto:mark.wildman@noaa.gov)).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

On June 17, 2014, the White House released a *Presidential Memorandum* entitled “Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud.” Among other actions, the Memorandum established a Presidential Task Force on Combating Illegal, Unreported, and Unregulated (IUU) Fishing and Seafood Fraud (Task Force), co-chaired by the Departments of State and Commerce, with membership including a number of other Federal agency and White House offices: the Departments of Agriculture, Defense, Health and Human Services, Homeland Security, Interior, and Justice; the Federal Trade Commission; the U.S. Agency for International Development; the Council on Environmental Quality; the Office of Management and Budget; the Office of Science and Technology Policy; the National Security Council; and the Office of the U.S. Trade Representative.

The Task Force was directed to report to the President “recommendations for the implementation of a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud that emphasizes areas of greatest need.” Those recommendations were provided to the President through the National Ocean Council, and NMFS requested comments from the public on how to effectively implement the recommendations of the Task Force (79 FR 75536, December 18, 2014). Oversight for implementing the recommendations of the Task Force has been charged to the National Ocean Council Standing Committee on IUU Fishing and Seafood Fraud (NOC Committee).

Recommendation 14 concerns the development of a risk-based traceability program (including defining operational standards and the types of information to be collected) as a

means to combat IUU fishing and seafood fraud. Recommendation 15 calls for the implementation of the first phase of that risk-based traceability program that tracks fish and fish products identified as being at risk of IUU fishing or seafood fraud from point of harvest to point of entry into U.S commerce. The first step taken to address Recommendations 14 and 15 was the identification of those species likely to be at risk of IUU fishing or seafood fraud. *See At-Risk Species* section below for further detail. The second step taken is this proposed rulemaking, which would establish data reporting and related operational requirements at the point of entry into U.S. commerce for imported fish and fish products of at-risk species. The data reporting requirements would apply to importers of record. The importers of record are the importers as identified in CBP entry filings for shipments containing the designated at-risk species. Customs brokers may fulfill these requirements on behalf of the importer of record at the importer of record's request. This rule implements MSA section 307(1)(Q), which makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation or any treaty or binding conservation measure to which the United States is a party. *See* 16 U.S.C. § 1857(1)(Q).

As indicated in the Task Force's recommendations to the President, it is the goal of the U.S. government "to eventually expand the program to all seafood at first point of sale or import." The process for expansion will account for, among other factors, consideration of authorities needed for more robust implementation, stakeholder input, and the cost-effectiveness of program expansion. By December 2016, the NOC Committee will issue a report that includes an evaluation of the program as set out in a final rule and implemented to date, as well as recommendations of how and under what timeframe it would be expanded.

## **International Trade Data System (ITDS)**

The SAFE Port Act (Public Law 109-347) requires all Federal agencies with a role in import admissibility decisions to participate in a single window system that allows information to be collected electronically through ITDS. Department of the Treasury has the U.S. Government lead on ITDS development and partner government agency integration. CBP developed the Automated Commercial Environment (ACE) as single window for the collection and dissemination of information to support ITDS. To comply with SAFE Port Act, NMFS is in the process of establishing ITDS as the electronic means of collecting NMFS-required catch and trade data at the point of entry for imports subject to existing trade monitoring programs. (80 FR 81251, December 29, 2015.) NMFS anticipates completing the final ITDS rule prior to finalizing this rule that would require entry filers, when importing at-risk species, to submit data elements at the point of entry into U.S. commerce and use the CBP ACE portal for submission of import data and/or document images (as applicable for HTS codes covered under multiple programs).

This proposed rule would also require the importer of record to obtain a permit to import a designated at-risk species (*see* International Fisheries Trade Permit section below for more detail). At-risk species, and some products derived from such species, would be identified by Harmonized Tariff Schedule (HTS) codes (in combination with other codes where applicable), and entries filed under these codes would be subject to the additional data requirements set forth in this proposed rule. While some HTS codes will have a direct correspondence to the at-risk species, other applicable HTS codes, particularly for processed products, may be broader (i.e., potentially including species other than those designated at-risk.) In such cases, supplementary product identifiers supplied at entry filing (e.g., acceptable market name, scientific name) would

be used to determine if the shipment includes at-risk species and is subject to additional data collection. NMFS is proposing to exclude highly processed fish products (fish oil, slurry, sauces, sticks, balls, cakes, puddings, and other similar highly processed fish products) from the additional data requirements in cases for which the species of fish comprising the product or the harvesting event(s) or aquaculture operation(s) of the shipment of the product cannot be feasibly identified.

Additional species and products may be subsequently identified for inclusion in the Seafood Traceability Program as part of the continuing process to implement Recommendations 14 and 15. Use of ITDS and the ACE portal is envisioned as the mechanism for implementing additional data collection requirements for imports of all fish species, if a decision is made to expand the Seafood Traceability Program, through future rulemaking, to include all fish species.

### **Entry into U.S. Commerce**

This proposed rule addresses only the collection of information on imported fish and fish products at the point of entry into U.S. commerce. For imported fish and fish products, entry into commerce is the landing on, bringing into, or introduction into, or attempted landing on, bringing into, or introduction into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States. *See* 16 USC 1802(22) (A) and (B). “Imported fish and fish products” do not include transit shipments that are not being imported into the United States and therefore do not enter U.S. commerce. However, the permitting, reporting and recordkeeping requirements of this proposed rule would apply only in cases of entries for consumption, withdrawals from a bonded warehouse for consumption or withdrawals from a foreign trade zone for consumption.

For U.S. domestic wild capture fisheries, entry into U.S. commerce occurs at the first point of landing or sale or transfer to a dealer or processor in the United States. In the case of harvesting vessels that process at-sea, transfer their catch to a processor at-sea, transfer their catch to a carrier or tender vessel at-sea, or transship their catch in port, entry into commerce is the offloading of the transferred and/or processed product for transshipment in an established U.S. port or roadstead. For U.S. domestic aquaculture products, entry into U.S. commerce is the first sale to a processing facility or directly to a consumer market.

For the designated at-risk species, equivalent information is already being collected at the point of entry into commerce for the products of U.S. domestic fisheries pursuant to various Federal and/or State fishery management and reporting programs. For this reason, this proposed rule does not duplicate data reporting and record retention requirements already in place for products of U.S. domestic fisheries, and instead focuses on accessing the data necessary to establish traceability from point of harvest to entry into U.S. commerce for imported fish and fish products. Together, the requirements already in place for products of U.S. domestic fisheries and the requirements proposed in this rule for imported fish and fish products provide a framework for the designated at-risk species to trace seafood, whether domestic or imported, back to the point of harvest or capture to verify that seafood entering U.S. commerce is both legally caught and not fraudulently represented.

With respect to aquaculture, U.S. domestic aquaculture is largely regulated at the state level. NOAA understands that U.S. states generally do not collect with respect to products of U.S. aquaculture operations the data this rule proposes to collect on imports. This is a concern as the IUU Task Force Action Plan calls for a traceability program that applies without regard to whether seafood is domestic or imported to ensure that seafood entering U.S. commerce is not



the product of IUU fishing or fraud. NMFS is aware of gaps in the collection of traceability information for domestic aquaculture-raised shrimp and abalone, and is working with its federal and state partners to identify and implement measures to address those gaps. While it remains NMFS' full intention to include shrimp and abalone in the final rule, implementation of measures to address those gaps may affect the timing of implementation of the reporting and recordkeeping requirements for imports of shrimp and abalone. In particular, if gaps remain unaddressed by the time of publication of a final rule, NMFS intends to delay implementation of the rule for shrimp and abalone until such time as, working with its state and federal partners, it is able to determine that the gaps have been addressed and publishes a notice in the Federal Register specifying implementation of this rule for those species.

### **At-Risk Species**

A working group including representatives from NMFS and other Federal agency partners solicited comment on principles to be applied in the identification of fish species likely to be most at risk of IUU fishing or seafood fraud (80 FR 24246, April 30, 2015). Taking into consideration public comment received, the working group evaluated the strength and utility of various indicators of IUU fishing or seafood fraud as well as their measurability and the robustness of data available to assess them. The working group endeavored to minimize overlap of principles to ensure that alignment with multiple principles did not overstate associated risk, and also to distinguish between risk of IUU fishing and risk of seafood fraud.

The working group identified the following draft principles: enforcement capability, existence of a catch documentation scheme, complexity of the supply chain, known species substitution, history of mislabeling (other than misidentification of species), and history of fisheries violations. Applying those principles to a base list of species, thirteen fish

species/species groups were identified as likely to be most at risk of IUU fishing or seafood fraud. NMFS solicited public comment on the draft principles and draft list of at-risk species (80 FR 45955, August 3, 2015). After taking into consideration public comment, NMFS issued final principles and applied those principles to determine a list of at-risk species (80 FR 66867, October 30, 2015). Public comments received in response to each of the above notices can be viewed through the docket created on the Federal e-Rulemaking Portal:

<http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0090> .

Pursuant to the process described above, NMFS issued a list of at-risk species and species groups that includes: Abalone; Atlantic Cod; Pacific Cod; Blue Crab; Red King Crab; Dolphinfin (Mahi Mahi); Grouper; Red Snapper; Sea Cucumber; Shrimp; Sharks; Swordfish; and Albacore, Bigeye, Skipjack, and Yellowfin Tuna. Although bluefin tuna species were determined to be at a lower risk of IUU fishing and seafood fraud than other tuna species and were not included on the list of at-risk species, the reporting and recordkeeping requirements proposed in this rule apply to HTS codes for fish and fish products of all tuna species including bluefin tuna. NMFS notes that bluefin tuna was historically a target of IUU fishing, and in response, two regional fisheries organizations implemented a catch documentation scheme which together include two of the three species world-wide. While NMFS continues to view the bluefin tuna to be at considerably lower risk of IUU fishing and seafood fraud than other tuna species and has made no modification to the list of at-risk species published on October 30, it proposes to cover bluefin tuna in this proposed rule (and has therefore included the HTS codes for bluefin tuna in the above list) in order to establish consistent treatment of tuna species, and avoid possible concerns that one species of tuna may be treated less favorably than others.

Although NOAA has, as discussed, previously sought comment on the list of species to which this rule will apply (80 FR 45955, August 3, 2015), NOAA recognizes that the public may further comment on the list of species and species groups, including whether any species should be added or deleted. It would be helpful if such comments include information on the factors established in Recommendations 14 and 15 of the IUU Task Force Action Plan. Because NOAA responded on October 30, 2015 (80 FR 66867) to comments received on the proposed list that was published on August 3, 2015 (80 FR 45955), NOAA requests that comments not be submitted on this proposal that are duplicative of those submitted on the list of species and contain no new information.

Under this proposed rule, importers would therefore be subject to the permitting, reporting and recording keeping requirements, which are described below, with respect to imports of the species and species groups as proposed, subject to revision at the time of issuance of the final rule. Entries of the fish and fish product of species covered by this rule filed under the following HTS codes would be designated in ACE as requiring the additional data in order to obtain release of the inbound shipment:

<i>HTS CODE</i>	<i>COMMODITY DESCRIPTION</i>
0301940100	TUNA BLUEFIN ATLANTIC,PACIFIC LIVE
0301950000	TUNA BLUEFIN SOUTHERN LIVE
0302310000	TUNA ALBACORE FRESH
0302320000	TUNA YELLOWFIN FRESH
0302330000	TUNA SKIPJACK FRESH
0302340000	TUNA BIGEYE FRESH
0302350100	TUNA BLUEFIN ATLANTIC,PACIFIC FRESH
0302360000	TUNA BLUEFIN SOUTHERN FRESH
0302470010	SWORDFISH STEAKS FRESH
0302470090	SWORDFISH FRESH
0302510010	GROUND FISH COD ATLANTIC FRESH
0302510090	GROUND FISH COD NSPF FRESH
0302810010	SHARK DOGFISH FRESH
0302810090	SHARK NSPF FRESH

0302895058	SNAPPER (LUTJANIDAE SPP.) FRESH
0302895061	GROUPE FRESH
0302895072	DOLPHINFISH FRESH
0303410000	TUNA ALBACORE FROZEN
0303420020	TUNA YELLOWFIN WHOLE FROZEN
0303420040	TUNA YELLOWFIN EVISCERATED HEAD-ON FROZEN
0303420060	TUNA YELLOWFIN EVISCERATED HEAD-OFF FROZEN
0303430000	TUNA SKIPJACK FROZEN
0303440000	TUNA BIGEYE FROZEN
0303450110	TUNA BLUEFIN ATLANTIC FROZEN
0303450150	TUNA BLUEFIN PACIFIC FROZEN
0303460000	TUNA BLUEFIN SOUTHERN FROZEN
0303490200	TUNA NSPF FROZEN
0303570010	SWORDFISH STEAKS FROZEN
0303570090	SWORDFISH FROZEN
0303630010	GROUND FISH COD ATLANTIC FROZEN
0303630090	GROUND FISH COD NSPF FROZEN
0303810010	SHARK DOGFISH FROZEN
0303810090	SHARK NSPF FROZEN
0303890067	SNAPPER (LUTJANIDAE SPP.) FROZEN
0303890070	GROUPE FROZEN
0304440010	GROUND FISH COD ATLANTIC FILLET FRESH
0304440015	GROUND FISH COD NSPF FILLET FRESH
0304450000	SWORDFISH FILLET FRESH
0304530010	GROUND FISH COD ATLANTIC MEAT FRESH
0304530010	GROUND FISH COD ATLANTIC MEAT FRESH
0304530015	GROUND FISH COD NSPF MEAT FRESH
0304530015	GROUND FISH COD NSPF MEAT FRESH
0304540000	SWORDFISH MEAT FRESH
0304711000	GROUND FISH COD NSPF FILLET BLOCKS FROZEN > 4.5KG
0304711000	GROUND FISH COD NSPF FILLET BLOCKS FROZEN > 4.5KG
0304715000	GROUND FISH COD NSPF FILLET FROZEN
0304715000	GROUND FISH COD NSPF FILLET FROZEN
0304870000	TUNA NSPF FILLET FROZEN
0304895055	DOLPHINFISH FILLET FROZEN
0304895055	DOLPHINFISH FILLET FROZEN
0304911000	SWORDFISH MEAT FROZEN > 6.8KG
0304919000	SWORDFISH MEAT FROZEN NOT > 6.8KG
0304951010	GROUND FISH COD NSPF MINCED FROZEN > 6.8KG
0304951010	GROUND FISH COD NSPF MINCED FROZEN > 6.8KG
0304991190	TUNA NSPF MEAT FROZEN > 6.8KG
0305320010	GROUND FISH COD NSPF FILLET DRIED/SALTED/BRINE

0305494020	GROUND FISH COD,CUSK,HADDOCK,HAKE,POLLOCK SMOKED
0305510000	GROUND FISH COD NSPF DRIED
0305620010	GROUND FISH COD NSPF SALTED MOISTURE CONTENT > 50%
0305620025	GROUND FISH COD NSPF SALTED MOISTURE CONTENT BET 45-50%
0305620030	GROUND FISH COD NSPF SALTED MOISTURE CONTENT BET 43-45%
0305620045	GROUND FISH COD NSPF SALTED MOISTURE CONTENT NOT > 43%
0305620050	GROUND FISH COD NSPF FILLET SALTED MOISTURE > 50%
0305620060	GROUND FISH COD NSPF FILLET SALTED MOISTURE CONTENT 45-50%
0305620070	GROUND FISH COD NSPF FILLET SALTED MOISTURE CONTENT 43-45%
0305620080	GROUND FISH COD NSPF FILLET SALTED MOISTURE NOT > 43%
0305710000	SHARK FINS
0306142000	CRABMEAT NSPF FROZEN
0306144010	CRAB KING FROZEN
0306144090	CRAB NSPF FROZEN
0306160003	SHRIMP COLD-WATER SHELL-ON FROZEN < 15
0306160006	SHRIMP COLD-WATER SHELL-ON FROZEN 15/20
0306160009	SHRIMP COLD-WATER SHELL-ON FROZEN 21/25
0306160012	SHRIMP COLD-WATER SHELL-ON FROZEN 26/30
0306160015	SHRIMP COLD-WATER SHELL-ON FROZEN 31/40
0306160018	SHRIMP COLD-WATER SHELL-ON FROZEN 41/50
0306160021	SHRIMP COLD-WATER SHELL-ON FROZEN 51/60
0306160024	SHRIMP COLD-WATER SHELL-ON FROZEN 61/70
0306160027	SHRIMP COLD-WATER SHELL-ON FROZEN > 70
0306160040	SHRIMP COLD-WATER PEELED FROZEN
0306170003	SHRIMP WARM-WATER SHELL-ON FROZEN < 15
0306170006	SHRIMP WARM-WATER SHELL-ON FROZEN 15/20
0306170009	SHRIMP WARM-WATER SHELL-ON FROZEN 21/25
0306170012	SHRIMP WARM-WATER SHELL-ON FROZEN 26/30
0306170015	SHRIMP WARM-WATER SHELL-ON FROZEN 31/40
0306170018	SHRIMP WARM-WATER SHELL-ON FROZEN 41/50
0306170021	SHRIMP WARM-WATER SHELL-ON FROZEN 51/60
0306170024	SHRIMP WARM-WATER SHELL-ON FROZEN 61/70
0306170027	SHRIMP WARM-WATER SHELL-ON FROZEN > 70
0306170040	SHRIMP WARM-WATER PEELED FROZEN
0306260020	SHRIMP COLD-WATER SHELL-ON FRESH/DRIED/SALTED/BRINE
0306260040	SHRIMP COLD-WATER PEELED FRESH/DRIED/SALTED/BRINE
0306270020	SHRIMP WARM-WATER SHELL-ON FRESH/DRIED/SALTED/BRINE
0306270040	SHRIMP WARM-WATER PEELED FRESH/DRIED/SALTED/BRINE
0308110000	SEA CUCUMBERS LIVE/FRESH
0308190000	SEA CUCUMBERS FROZEN/DRIED/SALTED/BRINE
1604141010	TUNA NSPF IN ATC (FOIL OR FLEXIBLE) IN OIL
1604141091	TUNA ALBACORE IN ATC (OTHER) IN OIL
1604141099	TUNA NSPF IN ATC (OTHER) IN OIL

1604142251	TUNA ALBACORE IN ATC (FOIL OR FLEXIBLE) NOT IN OIL IN QUOTA
1604142259	TUNA ALBACORE IN ATC (OTHER) NOT IN OIL IN QUOTA
1604142291	TUNA NSPF IN ATC (FOIL OR FLEXIBLE) NOT IN OIL IN QUOTA
1604142299	TUNA NSPF IN ATC (OTHER) NOT IN OIL IN QUOTA
1604143051	TUNA ALBACORE IN ATC (FOIL/ FLEXIBLE) NOT IN OIL OVER QUOTA
1604143059	TUNA ALBACORE IN ATC (OTHER) NOT IN OIL OVER QUOTA
1604143091	TUNA NSPF IN ATC (FOIL OR FLEXIBLE) NOT IN OIL OVER QUOTA
1604143099	TUNA NSPF IN ATC (OTHER) NOT IN OIL OVER QUOTA
1604144000	TUNA NSPF NOT IN ATC NOT IN OIL > 6.8KG
1604145000	TUNA NSPF NOT IN ATC NOT IN OIL NOT > 6.8KG
1605100510	CRAB PRODUCTS PREPARED DINNERS IN ATC
1605100590	CRAB PRODUCTS PREPARED DINNERS NOT IN ATC
1605102010	CRABMEAT KING IN ATC
1605102051	CRABMEAT SWIMMING (CALLINECTES) IN ATC
1605104002	CRABMEAT KING FROZEN
1605104025	CRABMEAT SWIMMING (CALLINECTES) FROZEN
1605104025	CRABMEAT SWIMMING (CALLINECTES) FROZEN
1605211000	SHRIMPS AND PRAWNS, NOT IN AIRTIGHT CONTAINERS
1605291000	SHRIMPS AND PRAWNS, OTHER
1605570500	ABALONE PRODUCTS PREPARED DINNERS
1605576000	ABALONE PREPARED/PRESERVED

For the above listed HTS codes that may be used to make entry for designated at-risk species and for species which are not so designated, the scientific name of the species in the shipment, or a disclaimer, will be required to discern whether the shipment offered for entry is subject to additional data collection under the proposed traceability program. This proposed rule does not cover highly processed fish products (fish oil, slurry, sauces, sticks, balls, cakes, puddings, and other similar highly processed fish products) for which the species of fish comprising the product or the harvesting event(s) or aquaculture operation(s) of the shipment of the product cannot be feasibly identified and therefore HTS codes for such fish and fish products have not been included in the list above. However other program requirements (e.g., TTVP) may have data reporting requirements applicable to these codes.

Regulatory requirements for reporting and recordkeeping already exist for certain products subject to this rule. In particular, tuna products would be subject to this proposed rule and are now subject to the Tuna Tracking and Verification Program (TTVP) (*See <http://www.nmfs.noaa.gov/pr/dolphinsafe/tunaHTScodes.htm>*), which monitors compliance under the Dolphin Protection Consumer Information Act (DPCIA) (16 USC 1385). NMFS seeks to avoid any duplication of reporting and recordkeeping by ensuring that those entities currently subject to the TTVP requirements will only have to report the required information to the ACE portal once (and, similarly, those entities subject to both sets of requirements will only keep one set of records for purposes of tracking and verification). Furthermore, in light of the similarity in underlying reporting and recordkeeping requirements of the IUU fishing seafood fraud traceability program and the TTVP program, which verifies whether tuna product marketed as “dolphin safe” meets the eligibility conditions for the dolphin safe label, NMFS intends to ensure that any future changes to the IUU fishing and risk of seafood fraud requirements such as converting certain recordkeeping requirements to a reporting requirement, as discussed below, will be replicated in the TTVP program (through the inclusion of appropriate HTS codes) so that entities serving the U.S. tuna product market will not be subject to conflicting reporting and recordkeeping requirements. Comments regarding HTS codes should address the extent to which the listed codes accurately reflect the potential universe of products associated with the list of at-risk species and the cost effectiveness of including more or fewer codes.

### **Data for Reporting and Recordkeeping**

The working group considered the minimum types of information that should be reported in order to determine that imports of at-risk species are not products of illegal fishing or are fraudulently represented. The area of harvest or the location of the aquaculture facility, and the

time at which the harvest took place, represents the initial “link” in the supply chain. At-risk species entering U.S. commerce will be traced to their harvest and its authorization. Information on each point of transshipment and processing throughout the fish or fish product’s chain of custody culminating at the point of entry into U.S. commerce can also be used to trace product back to point of harvest.

The data to be reported for at-risk species would be in addition to the information required by CBP as part of normal entry processing via the ACE portal. To avoid duplication, the interagency working group considered data that are already collected by CBP on the entry/entry summary, and data that are, or will be, collected via ACE by NMFS and other ITDS partner government agencies (e.g., Food and Drug Administration, Fish and Wildlife Service, Department of State).

NMFS issued a notice (80 FR 37601, July 1, 2015) to request public input on the minimum types of information necessary for an effective seafood traceability program to combat IUU fishing and seafood fraud, as well as the operational standards related to collecting, verifying and securing that data. A number of respondents from the trade community expressed concern that any additional documentation and the electronic collection of data would create a burden to the industry, and could compromise the confidential relationships between buyers and suppliers. While changes will need to be made that may pose a challenge in the near term for some industry members, it is anticipated that the long-term benefits of electronic data collection will outweigh these challenges. To address concerns about data confidentiality, data security will be given the highest priority. Information collected via ACE and maintained in CBP systems is highly sensitive commercial, financial and proprietary information, generally exempt from disclosure pursuant to the Freedom of Information Act (5 USC 552(b)(4)) and prohibited



from disclosure by the Trade Secrets Act (18 USC 1905). NMFS further notes that information required to be submitted to the agency under the MSA is subject to MSA confidentiality of information requirements at 16 USC 1881a(b).

Several comments expressed the desire for all fish species to be included in the initial phase of the traceability program, not just the subset of identified at-risk species. Others commented that monitoring and control should not stop at the point of entry into U.S. commerce, but carry all the way through to the final retail consumer, where many feel that most fraud occurs, especially in terms of mislabeling. Although this proposed rule is the initial phase, and is designed in such a way that it can be expanded to eventually include all species, as warranted by risk analysis, it is not designed to expand traceability from the point of entry into commerce to the final consumer. As noted earlier, the MSA makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported or sold in violation of any foreign law or regulation. Other state and Federal agencies have broader authority regarding mislabeling and other misrepresentation of food products and consumer protection that may be applied at other points in the supply chain up to the final sale.

The comments reflected almost universal support for the use of scientific names for accurate species identification, with the addition of FDA-approved market names on consumer labeling for user-friendliness. Many of the comments suggested that the United Nations Food and Agriculture Organization (FAO) Fishing Area alone is not sufficient to identify a precise location of harvest, and that fishing location should be more closely defined by including the country of origin (for product harvested within another country's waters), regional designation, or even GPS coordinates.

The domestic fishing community also expressed the desire for importers to be held to the same documentation standards that apply to U.S. fisheries because they feel that they “already provide a staggering amount of information and demonstrate a high degree of traceability.” The NOC Committee agrees that data regarding fish and fish products from both domestic and foreign sources must be required to enable officials to determine lawful harvest and, also, reduce the incidence of fraud. Much of the data needed to combat IUU fishing is already being collected in many foreign fisheries, and using the single-window ITDS system at the point of entry would help streamline and unify the data reporting and verification process, and provide the needed inter-operability of information exchange across the supply chain.

After consideration of comments as outlined above, NMFS proposes that, at the point of entry for species covered by this rule, importers of record would be required to report the following information for each entry in addition to other information that CBP and other agencies, including NMFS, currently require:

- Information on the entity(ies) harvesting or producing the fish (as applicable): Name and flag state of harvesting vessel(s) and evidence of authorization; Unique vessel identifier(s) (if available); Type(s) of fishing gear; Name(s) of farm or aquaculture facility.
- Information on the fish that was harvested and processed, including: Species of fish (scientific name, acceptable market name, and ASFIS number); Product description(s); Name(s) of product; Quantity and/or weight of the product(s).
- Information on where and when the fish were harvested and landed: Area(s) of wild-capture or aquaculture harvest; Harvest date(s); Location(s) of aquaculture facility; Point of first landing; Date of first landing; Name of entity(ies) (processor, dealer, vessel) to

which fish was landed.. Such information may be contained, for example, in catch certificates, landing reports, and port inspection reports. Entries may comprise products from more than one harvest event and each event relevant to entry must be reported.

- The NMFS IFTP number issued to the importer of record for the entry.

Additional information on each point in the chain of custody regarding the shipment of the fish or fish product to point of entry into U.S. commerce would be established as a recordkeeping requirement on the part of the importer of record to ensure that information is readily available to NMFS to allow it to trace the fish or fish product from the point of entry into U.S. commerce back to the point of harvest to verify the information that is reported upon entry. Such information would include records regarding each custodian of the fish and fish product, including, as applicable, transshippers, processors, storage facilities, and distributors. The information contained in the records must be provided to NMFS upon request and be sufficient for NMFS to conduct a trace back to verify the veracity of the information that is reported on entry. NMFS expects that typical supply chain records that are kept in the normal course of businesses, including declarations by harvesting/carrier vessels, bills of lading and forms voluntarily used or required under foreign government or international monitoring programs which include such information as the identity of the custodian, the type of processing, and the weight of the product, would provide sufficient information for NMFS to conduct a trace back. In addition to relying on such records, the trade may choose to use model forms that NMFS has developed to track and document chain of custody information through the supply chain. NMFS seeks comments on proposed model forms it has developed for this purpose which are available in the docket for this rulemaking at [www.regulations.gov](http://www.regulations.gov).

Due to technological limitations of automated data processing for imaged documents and requirements associated with the phase-in of ITDS, this proposed rule requires that chain of custody information be retained by the importer of record and made available to NMFS upon request. However, NMFS recognizes the conservation value of requiring reporting of key chain of custody data elements for the purpose of real-time verification and compliance risk assessment if those data can be accessed and analyzed using automated processes. While constraints on the expansion of information collected through message sets prior to full operationalization of ITDS by December 31, 2016 preclude the inclusion in this proposed rule of a reporting requirement for chain of custody information in that manner, NMFS will identify (including based on its experience with audits conducted pursuant to this rule) key chain of custody data elements that pose conservation benefits for real-time reporting by one year from full implementation of the final rule, and implement through subsequent rulemaking the reporting of key chain of custody data via message set into the ITDS system.

As explained above, NMFS proposes that the importer of record, or entry filer acting on their behalf, report the data required under the proposed program via the ACE portal as part of the CBP entry/entry summary process. To this end, importers of record who enter the designated at-risk species would be required to supply the data required to be reported under this proposed rule electronically through the ACE Partner Government Agency Message Set for NMFS (NMFS Message Set) and/or the DIS. The format for the NMFS Message Set would be designated for each of the affected commodities (by HTS code) and specified in the following documents that would be jointly developed by NMFS and CBP and made available to importers and other entry filers by CBP (<http://www.cbp.gov/trade/ace/catair>):

- CBP and Trade Automated Interface Requirements – Appendix PGA

- CBP and Trade Automated Interface Requirements – PGA Message Set
- Automated Broker Interface (ABI) Requirements – Implementation Guide for NMFS

In developing software for assembling and transferring the additional data to ACE, importers may wish to consider interoperability with existing traceability systems that are prevalent in the private sector supply chain or which may exist for certain commodities subject to catch/trade documentation schemes under the auspices of a regional fishery management organization (RFMO). While NMFS does not endorse any particular private sector traceability system, use of such systems may facilitate the collection of the required information along the supply chain in order to report this information through ACE. However, importers of record are still responsible for the accuracy of the information in their import transactions, irrespective of whether integration software or other automated supply chain solutions are utilized.

Where RFMO catch/documentation schemes apply to the affected at-risk species, including those that have been implemented by NMFS through regulation (e.g., the swordfish statistical document of the International Commission for the Conservation of Atlantic Tunas), it is anticipated that compliance with the entry data collection requirements of these schemes would for the most part meet the data reporting and recordkeeping requirements of the traceability program proposed here. However, ITDS provides sufficient flexibility to collect additional data in cases where the data requirements of the seafood traceability program proposed by this rule would exceed those of an RFMO scheme applicable to the same species. NMFS will work with CBP to avoid duplication of reporting requirement in cases where more than one reporting program applies to a particular fish or fish product, and to ensure that all the data are reported to meet the requirements of each applicable reporting program.

#### **International Fisheries Trade Permit (IFTP)**

The ITDS proposed rule would establish the IFTP to consolidate existing permits under the highly migratory species international trade program (HMS ITP) and Antarctic marine living resources (AMLR) program, and would require a permit for the TTVP. (80 FR 81251, December 29, 2015). (*See* Intersection with Other Applicable Requirements section below for further detail on the existing trade monitoring programs.) This proposed rule would extend the IFTP requirement in the ITDS proposed rule to include importers of record identified in CBP entry filings for shipments containing the designated at-risk species covered by this rule. Requiring the IFTP would allow NMFS to identify, and have current contact information for, importers of the at-risk species covered by this rule. This will enable NMFS to provide information about data reporting and recordkeeping requirements applicable to at-risk species; alert permit holders in advance of any pending changes to data reporting and recordkeeping requirements, including additional data elements or at-risk species; and minimize the potential for disruptions in trade and costly delays in release of shipments.

To obtain the IFTP, U.S. importers of record for designated at-risk species covered by this rule and seafood products derived from such species would electronically submit their application and fee for the IFTP via the National Permitting System website designated by NMFS. The fee charged for the IFTP would be calculated, at least annually, in accordance with procedures set forth in Chapter 9 of the NOAA Finance Handbook for determining the administrative costs for special products and services (<http://www.corporateservices.noaa.gov/finance/Finance%20Handbook.html>); the permit fee would not exceed such costs. An importer of record who is required to have an IFTP only needs one IFTP. Separate permits are not required, for example, if the imported species are covered under more than one program or the importer trades in more than one covered species.

## **Reporting and Recordkeeping**

This proposed rule would require that an IFTP holder (i.e., importer of record as identified on CBP entry/entry summary) report certain data for entries of at-risk species covered by this rule. NMFS would provide detailed information to permit holders regarding submission of such data, as well as on recordkeeping, in a compliance guide for industry that will be prepared in advance of NMFS' implementation of a final rule. (The guide may include information on electronic filing through ITDS.) The IFTP holder/importer of record would be required to maintain or have access to, and make available for inspection, electronic or paper versions of records associated with an entry for at-risk species at their place of business for a period of five years after the date of entry.

NMFS believes the costs of this rule will be relatively minor. Nonetheless, NMFS recognizes that the public may comment on this aspect of the proposed rule and possibly suggest alternative approaches. Section 2.6 of the Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis discusses several alternatives that were considered and ultimately rejected by NMFS. Any comments on these alternatives or any other modifications to the proposed reporting and recordkeeping requirements should explain how they maintain the rule's effectiveness at combating IUU fishing and seafood fraud.

This proposed rule recognizes that the importer of record may be different from the entity that actually completes CBP entry filings (i.e., customs broker). An importer of record must obtain an IFTP and is responsible for complying with all of the requirements of this rule. The importer could arrange for a customs broker to submit required data elements for at-risk species through ACE. The customs broker would have to report the IFTP number of the importer of record along with the other required data elements for the specific entry but would not need to

obtain an IFTP. However, the importer of record must still comply with the record keeping and inspection requirements of this rule.

### **Verification of Entries**

To implement this proposed regulation, business rules would be programmed into ACE to automatically validate that the importer of record has satisfied all of the NMFS Message Set and document image requirements as applicable to HTS codes subject to multiple programs (e.g., all data fields are populated and conform to format and coding specifications, required image files are attached). Absent validation of the NMFS requirements in ACE, the entry filed would be rejected and the entry filer would be notified of the deficiencies that must be addressed in order for the entry to be certified by ACE prior to release by NMFS and CBP. In addition to automated validation of the data submitted, entries may be subject to verification by NMFS that the supplied data elements are true and can be corroborated via auditing procedures (e.g., vessel was authorized by the flag state, legal catch was landed to an authorized entity, processor receipts correspond to outputs). For shipments selected for verification, if verification of the data cannot be completed by NMFS pre-release, NMFS may request that CBP place a hold on a shipment pending verification by NMFS or allow conditional release, contingent upon timely provision of records by the importer of record to allow data verification. Entries for which timely provision of records is not provided to NMFS or that cannot be verified as lawfully acquired and non-fraudulent by NMFS, will be subject to enforcement or other appropriate action by NMFS in coordination with CBP. Such responses could include a re-delivery order for the shipment, exclusion from entry into commerce of the shipment, or enforcement action against the entry filer or importer of record.



To select entries for verification, NMFS would work with CBP to develop a specific program within ITDS to screen information for the covered commodities based on risk criteria. For example, risk-based screening and targeting procedures can be programmed to categorize entries by volume and certain attributes (e.g., ocean area of catch, vessel type or gear), and then randomly select entries for verification on a percentage basis within groups of entries defined by the associated attributes. In applying these procedures, NMFS would implement a verification scheme, including levels of inspection sufficient to assure that imports of the at-risk species are not products of illegal fisheries and are not fraudulently represented. Given the volume of imports, and the perishable nature of seafood, it would not likely be cost-effective for most verifications to be conducted on a pre-release basis. However, the verification scheme may involve targeted operations on a pre-release basis that are focused on particular products or ports of concern.

A verification program as described above will facilitate a determination of whether imported seafood has been lawfully acquired and not misrepresented and deter the infiltration of illegally harvested and misrepresented seafood into the supply chain. In addition to market access deterrence, there may be price effects in that illegal or would be fraudulent seafood must be diverted to lower value markets. Taken together, market access and price effects would reduce the incentives for illegal fishing operations and for seafood fraud. Conversely, authorized fisheries stand to benefit from import monitoring programs that aim to identify and exclude products of IUU fishing and seafood fraud, both through enhanced market share and potentially higher prices.

### **Voluntary Third Party Certifications and Trusted Trader Program**

NMFS is considering how voluntary third party seafood certification programs could simplify entry filing for designated at-risk species or could be used to meet reporting requirements under this proposed rule. NMFS requests comment on how interoperability of third party data systems could be applied to meet the data reporting requirements on a pre-arrival basis or at the point of entry. Such interoperable systems would have to provide the information necessary for NMFS to trace product to the harvest event and therefore be sufficient to identify product that is the result of IUU fishing or is misrepresented.

Additionally, NMFS is considering how a Trusted Trader program might be used to streamline entry processing for designated at-risk species. The Trusted Trader Program is intended to streamline entry processing consistent with ensuring that all traders in the supply chain comply with applicable U.S. regulations. Participants in the Trusted Trader Program would collect or have access to the same data as non-participants, but may not need to provide it prior to entry. NMFS requests comment regarding the potential design and use of a Trusted Trader Program in connection with the requirements proposed in this rule, in particular how it could be used to streamline entry while allowing the United States to determine that imported seafood has been lawfully acquired and not misrepresented and to deter the infiltration of illegally harvested and misrepresented seafood into the supply chain.

### **Consideration of the European Union catch certification scheme**

The European Union (EU) adopted the IUU Regulation on September 29, 2008, which included a catch certification scheme for importation and exportation of fishery products. The EU's IUU regulations do not include a traceability scheme equivalent to that as contemplated by the IUU Task Force and as proposed in this rule. However, NMFS is interested in comments on how some of the elements inherent in the EU's IUU regulations may be adapted

to this rule as a means of facilitating compliance and reducing burden for exporters, either through the design of the traceability process itself or as part of a trusted trader program.

### **Implementation Timeframe**

NMFS requests specific comment on the implementation date for the data reporting and recordkeeping requirements for at-risk species under this proposed rule. While some firms may have adequate information systems already in place, other firms may need lead time to develop and implement mechanisms for transmitting the required information along the supply chain so that the data are available for entry filers to submit via ACE. NMFS anticipates that this proposed rule would become effective in September 2016, consistent with timeframes described in the IUU and Seafood Fraud Task Force Action Plan, but that the date by which importers are required to comply with the requirements in the rule will be sometime after that. NMFS seeks comment on an appropriate implementation date or dates, taking into account any time firms may require to adapt to their practices to comply with the requirements of this rule as well as logistical considerations such as compliance with anticipated revisions to ITDS that will allow chain of custody information to be submitted electronically. As an initial estimate, NMFS anticipates that firms may need between 90 days and 12 months to adapt their practices to comply with the requirements of this rule and proposes an implementation date of somewhere between 90 days and 12 months following publication of the final rule.

In addition to seeking comments on the implementation timeframe for this first phase of the traceability program, feedback is also sought on the lead time needed for seafood trade participants to implement potential expansion of this rule, either by inclusion of additional species and/or additional data elements. NMFS proposes to implement changes to reporting or recordkeeping requirements for species and data elements through notice and comment

rulemaking procedures. Future proposed rules would specify the changes to reporting or recordkeeping requirements and would direct potentially affected parties to the pertinent CBP documents (Appendix PGA, PGA Message Set, Implementation Guide for NMFS) as described in the Customs and Trade Automated Interface Requirements (CATAIR) available at:

<http://www.cbp.gov/sites/default/files/documents/ACE%20NMFS%20PGA%20MS%20Guidelines%20-%20July%202022%202015.pdf>) that would be developed jointly by NMFS and CBP to provide the implementation details (e.g., species by HTS code, data elements, message set format, DIS requirements).

### **International Cooperation and Assistance**

Subject to the availability of resources, NMFS intends to provide assistance to exporting nations to support compliance with the requirements of this proposed rule, including by providing assistance to build capacity to: (1) undertake effective fisheries management; (2) strengthen fisheries governance structures and enforcement bodies to combat IUU fishing and seafood fraud; and (3) establish, maintain, or support systems to enable export shipments of fish and fish products to be traced back to point of harvest.

### **Intersection with Other Applicable Requirements**

The proposed requirements for additional data collection at entry into U.S. commerce for imported at-risk species could intersect with data collection requirements applicable to imports of those same species under several other authorities. Some of these authorities are related to combating IUU fishing, while other authorities are aimed at other concerns such as managing bycatch.

NMFS has previously issued regulations to implement programs for fishery products subject to RFMO documentation requirements and/or catch documentation under domestic laws.

These regulations pertain to trade monitoring under three main programs: the HMS ITP, which regulates trade in specified commodities of tuna, swordfish, billfish, and shark fins under the MSA and requirements adopted by several tuna RFMOs to which the United States is a contracting party; the AMLR program, which regulates trade in Antarctic and Patagonian toothfish and other fishery products managed under the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR); and TTVP, which regulates trade of purse seine harvested in frozen and/or processed tuna products under the Marine Mammal Protection Act. Monitoring authority, conducted under the TTVP, is also provided for tuna products by the DPCIA, which specifies the conditions under which tuna products are eligible to be labeled as dolphin-safe.

Many of these monitoring programs require parties who import into or export, and/or re-export from the U.S. regulated species to: obtain a permit from NMFS, obtain documentation on the flag-nation authorization for the harvest from the foreign exporter, and submit this information to NMFS. Depending on the commodity, specific information may also be required, for example: the flag nation of the harvesting vessel, the ocean area of catch, the fishing gear used, the name of the harvesting vessel and details and authorizations related to harvest, landing, transshipment and export/re-export.

In addition to these three programs, NMFS may implement or recommend trade measures for certain commodities under several other authorities. The High Seas Driftnet Fishing Moratorium Protection Act (HSDFMPA) (16 USC 1826d-k) sets forth a process for identification and certification of nations for IUU fishing, bycatch of protected living marine resources, and unsustainable shark fishing. Certain fish and fish products from identified nations that do not receive positive certifications could be subject to denial of port privileges and/or

import prohibitions under the authority provided in the High Seas Driftnet Fisheries Enforcement Act (HSDFEA) (16 USC 1826a-c). There are also identification and/or certification procedures in other statutes, including the Pelly Amendment to the Fishermen's Protective Act (22 USC 1978) and the Atlantic Tunas Convention Act (ATCA) (16 USC 971 *et seq.*). These procedures may result in trade restrictions or other measures for fishery products from a certified country that are associated with the activity that resulted in the certification. Further, import prohibitions for certain fishery products could also be applied under provisions of the Marine Mammal Protection Act (MMPA) (16 USC 1361 *et seq.*) and other statutes, depending on the circumstances of the fish harvest and the conservation concerns of the United States.

Multilateral efforts to combat IUU fishing may also result in requirements to take trade action. The United States is a member or contracting party to several RFMOs that have established procedures to identify nations and/or vessels whose fishing activities undermine the effectiveness of the conservation and management measures adopted by the organization. Fishery products exported by such nations or harvested by such vessels may be subject to import prohibitions. Relevant RFMO statutes include the Atlantic Tunas Convention Act (16 USC 971 *et seq.*), the Antarctic Marine Living Resources Convention Act (AMLRCA) (16 USC 2431 *et seq.*), the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA) (16 USC 6901 *et seq.*), and the Tuna Conventions Act (TCA) (16 USC 951 *et seq.*). Implementation of such RFMO-derived trade measures may require the collection of information about certain fish products from certain countries, including the United States, and some of these existing measures do involve the at-risk species designated in this proposed rule.

For existing programs involving collection and reporting of trade information that overlap with the at-risk species proposed for data collection in this current rulemaking, NMFS

has examined the data required under those existing programs and has adjusted the NMFS Message Set specified in the ABI Implementation Guide to ensure that all regulatory requirements are met while avoiding duplication. Likewise, NMFS has avoided duplication between the at-risk species data reporting and recordkeeping requirements contained in this proposed rule and any documentation requirements affecting designated at-risk species that have been implemented pursuant to other existing programs. Should future trade monitoring requirements be applied for designated at-risk species under any statutory authority, NMFS will consider how to avoid duplication of data collection accordingly. However, entry filers should carefully examine the data reporting and recordkeeping requirements contained in this proposed rule and other applicable rules, as further explained in the ABI Implementation Guide, for the commodities that comprise the shipment to ensure that all regulatory requirements are met for all trade-related programs that are applicable. The ABI Implementation Guide will be updated by NMFS and CBP to provide the trade with a single comprehensive resource addressing all applicable program requirements for imports of fish and fish products subject to data reporting and recordkeeping requirements under NMFS statutory authority. NMFS would welcome public comment as to whether there are any additional duplicative data reporting or recordkeeping requirements which have not been identified.

### **Classification**

This proposed rule is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 USC 1801 *et seq.* The NMFS Assistant Administrator has determined that this proposed action is consistent with the provisions of this and other applicable laws, subject to further consideration after public comment.

*Executive Order 12866*

This proposed rule has been determined to be significant for the purposes of Executive Order (E.O.) 12866 because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. NMFS has prepared a regulatory impact review of this action, which is available from NMFS (see **ADDRESSES**). This analysis describes the economic impact this proposed action, if adopted, would have on U.S. businesses and consumers. NMFS invites the public to comment on this proposal and the supporting analysis.

The regulatory action being considered, and its legal basis, is described in the preamble of this proposed rule. This proposed rule would require a permit (IFTP) for importers of at-risk species. Additionally, information pertaining to the harvest and landing of the product prior to U.S. import would be required at the point of entry into U.S. commerce, and certain records must be retained. With regard to the possible economic effects of this action, NMFS anticipates that U.S. entities would not be significantly affected by this action because it does not directly restrict trade in the designated at-risk species and does not pose entirely new burdens with regard to the collection and submission of information necessary to determine product admissibility. Some of the data proposed to be collected at entry or to be subject to recordkeeping requirements is already collected by the seafood industry in order to comply with food safety and product labeling requirements. In addition, the majority of the countries exporting fish and fish products derived from the designated at-risk species to the U.S. market also export a number of these same fish and fish products to the European Union (E.U.) market. Consequently, many harvesting states, port states, and intermediary/exporting states that would be affected by this rule may already have comparable information collection systems in place to satisfy the requirements of E.U. regulation on IUU fishing.



### *Regulatory Flexibility Act*

This proposed rule has been determined to be significant for the purposes of Executive Order (E.O.) 12866 because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule will have on small entities and includes a description of the action, why it is being considered, and the legal basis for this action. The purpose of the RFA is to relieve small businesses, small organizations, and small governmental entities of burdensome regulations and recordkeeping requirements. Major goals of the RFA are: (1) To increase agency awareness and understanding of the impact of their regulations on small business, (2) to require agencies to communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action. Below is a summary of the IRFA for the proposed rule which was prepared in conjunction with a Regulatory Impact Review (RIR). The IRFA/RIR is available from NMFS (see **ADDRESSES**).

The primary objective of this proposed rule is to collect or have access to additional data on imported fish and fish products to determine that it has been lawfully acquired and is not fraudulent and to deter illegally caught or misrepresented seafood from entering into U.S. commerce. These data reporting and recordkeeping requirements affect *inter alia* importers of seafood products, many of which are small businesses. Given the level of imports contributing to the annual supply of seafood, collecting and evaluating information about fish and fish

products sourced overseas are a part of normal business practices for U.S. seafood dealers. The permitting, electronic reporting and recordkeeping requirements proposed by this rulemaking would build on current business practices (e.g., information systems to facilitate product recalls, to maintain product quality, or to reduce risks of food borne illnesses) and are not estimated to pose significant adverse or long-term economic impacts on small entities.

If this rule is finalized, NMFS estimates there will be approximately 2,000 new applicants for the IFTP, with an estimated industry-wide increase in annual costs to importers of \$60,000 in permit fees. Data sets to be submitted electronically to determine product admissibility are, to some extent, either already collected by the trade in the course of supply chain management, already required to be collected and submitted under existing trade monitoring programs (e.g., tuna, swordfish, toothfish), or collected in support of third party certification schemes voluntarily adopted by the trade. Incremental costs are likely to consist of developing interoperable systems to ensure that the data are transmitted along with the product to ensure the information is available to the entry filer.

The proposed rule would apply to U.S. entities that import fish and fish products derived from the designated at-risk species. This proposed rule would be implemented so as to avoid duplication or conflict with any other Federal rules. To the extent that the proposed requirements overlap with other reporting requirements applicable to the designated at-risk species, this will be taken into account to avoid collecting data more than once or by means other than the single window (ACE portal). As stated above, this rule is intended to allow NMFS to determine that imported seafood has been lawfully acquired and is not fraudulently represented and to deter illegally caught or misrepresented seafood from entering into U.S. commerce. Given the large volume of fish and fish product imports to the U.S. market, the number of exporting countries,

and the fact that traceability systems are being increasingly used within the seafood industry, it is not expected that this rule would significantly affect the overall volume of trade or alter trade flows in the U.S. market for fish and fish products that are legally harvested and accurately represented.

NMFS considered several alternatives in this rulemaking: the requirements described in the proposed rule, a no-action alternative and various combinations of data reporting and recordkeeping for the supply chain information applicable to the at-risk species. NMFS prefers the proposed rule approach, because it would implement the initial phase of a traceability program as envisioned by Recommendations 14 and 15 of the Task Force. In addition, it is consistent with the existing requirement that all applicable U.S. government agencies are required to implement ITDS under the authority of the SAFE Port Act and Executive Order 13659, Streamlining the Export/Import Process (79 FR 10657, February 28, 2014). Also, the proposed traceability program takes into account the burden of data collection from the trade and the government requirements for admissibility determinations.

#### *National Environmental Policy Act*

Under NOAA Administrative Order (NAO 216–6), the promulgation of regulations that are procedural and administrative in nature are categorically excluded from the requirement to prepare an Environmental Assessment. These proposed regulations to implement a seafood traceability program are procedural and administrative in nature in that they would impose reporting and recordkeeping requirements for ongoing authorized catch and trade activities. Fishing activity and trade in seafood products are not further restricted relative to any existing laws or regulations, either foreign or domestic. Given the procedural and administrative nature of this rulemaking, an Environmental Assessment was not prepared.

### *Paperwork Reduction Act*

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. The information collection burden for the requirements proposed under this rule (IFTP, harvest and landing data submitted at entry, image files submitted at entry, and provision of records of supply chain information) as applicable to imports of the designated at-risk species are estimated to be an increase of 18,542 hours and \$278,130. Recordkeeping/reporting costs (permit application fees at \$30 each) will total \$60,000. This proposed rule does not anticipate any other information collection burden than what is identified in this section, and therefore is not requesting approval from OMB for the burden associated with any other aspects of the rule.

Public comment is sought regarding: whether this proposed data reporting is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. The public may also wish to comment on how alternative compliance schedules for these reporting and record keeping requirements may affect burden. Draft model forms are also available on both *www.regulations.gov* and *www.reginfo.gov* for public review and comment. Send comments on these or any other aspects of the collection of information to the NOAA Fisheries Office for International Affairs and Seafood Inspection at the **ADDRESSES** above, and by e-mail to *OIRA\_Submission@omb.eop.gov* or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

### **List of Subjects**

#### *50 CFR Part 300*

Exports, Fisheries, Fishing, Fishing vessels, Illegal, unreported or unregulated fishing, Foreign relations, Imports, International trade permits, Treaties.

#### *50 CFR Part 600*

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: February 1, 2016.

---

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart R, as proposed to be added December 29, 2015, (80 FR 81251), is proposed to be further amended and 50 CFR part 600 is proposed to be amended as follows:

## **50 CFR Chapter III—INTERNATIONAL FISHING AND RELATED ACTIVITIES**

### **Part 300—INTERNATIONAL FISHERIES REGULATIONS**

1. The authority citation for 50 CFR part 300 continues to read as follows:

**Authority:** 16 USC 951 *et seq.*; 16 USC 1801 *et seq.*; 16 USC 5501 *et seq.*; 16 USC 2431 *et seq.*; 31 USC 9701 *et seq.*

2. Further amend § 300.321, proposed to be added December 29, 2015, (80 FR 81251), by adding a definition for “Seafood Traceability Program” in alphabetical order, and revising the definitions of “Catch and Statistical Document/Documentation”, “Documentation and data sets required under this subpart” and “Fish or fish products regulated under this subpart” to read as follows:

#### **§300.321 Definitions.**

\* \* \* \* \*

*Catch and Statistical Document/Documentation* means a document or documentation, in paper or electronic form, accompanying regulated seafood imports and exports that is submitted by importers and exporters to document compliance with TTVP, AMLR, and HMS ITP trade documentation programs as described in §216.24 (f) of this title, and subparts G and M of this part, or the Seafood Traceability Program as described in this subpart.

*Documentation and data sets required under this subpart* refers to documentation and data that must be submitted by an importer or exporter to NMFS at the time of, or in advance of, the import, export, or re-export, as well as documentation and data that must be retained by the importer or exporter of record in conjunction with a filing, for seafood products regulated under the TTVP, AMLR, and HMS ITP programs as described in §216.24(f) of this title, and subparts G and M of this part, or the Seafood Traceability Program as described in this subpart.

*Fish or fish products regulated under this subpart* means species and products containing species regulated under this subpart, the AMLR program, the HMS ITP, or the TTVP.

\* \* \* \* \*

*Seafood Traceability Program* means the data reporting and recordkeeping requirements established under § 300.324 of this title.

\* \* \* \* \*

3. Further revise § 300.323, proposed to be added December 29, 2015, (80 FR 81251), to read as follows:

**§300.323 Reporting and Recordkeeping Requirements.**

A person entering for consumption or withdrawal from a foreign trade zone or bonded warehouse for consumption, exporting, or re-exporting fish or fish products regulated under this subpart from any ocean area, or any area of jurisdiction for aquaculture facilities, must file all data sets, reports, and documentation required under the AMLR program, HMS ITP, TTVP and Seafood Traceability Program and under other regulations that incorporate by reference the requirements of this subpart. A paper or electronic copy of all required reports and documentation, and all supporting records upon which an entry filing or export declaration is made, must be maintained by the importer of record, and made available for inspection, at the importer of record's place of business for a period of five years from the date of the import, export or re-export.

4. Further redesignate § 300.324, proposed to be added December 29, 2015, (80 FR 81251), as § 300.325 and add new § 300.324 to read as follows:

**§300.324 Seafood Traceability Program.**

This section establishes a Seafood Traceability Program which comprises data reporting requirements at point of entry for imported fish or fish products and recordkeeping requirements. The data reported and retained will facilitate: a determination that the fish or fish products are not misrepresented or the product of IUU fishing, including that they were not taken in violation of any foreign law or regulation, and exclusion of products from entry into U.S. commerce that are misrepresented or the product of IUU fishing. The data reporting and recordkeeping requirements under the program enable verification of the product offered for entry back to the harvesting event(s).

(a) The following species or species groups are subject to this Seafood Traceability Program: Abalone; Atlantic Cod; Pacific Cod; Blue Crab; Red King Crab; Dolphinfin (Mahi Mahi); Grouper; Red Snapper; Sea Cucumber; Shrimp Sharks; Swordfish; Tunas (Albacore, Bigeye, Skipjack, Yellowfin, and Bluefin). The harmonized tariff schedule numbers applicable to these species or species groups are listed in the documents referenced in paragraph (c) of this section. Data required to be reported and retained under this program is not required for HTS codes applicable to fish oil, slurry, sauces, sticks, balls, cakes, pudding and other similar highly processed fish products for which the species of fish comprising the product or the harvesting event(s) or aquaculture operation(s) of the shipment of the product cannot currently be feasibly identified.

(b) In addition to data reporting requirements applicable pursuant to other authorities and requirements set out elsewhere in U.S. law and regulation (e.g., under other NMFS programs or CBP requirements) to the particular commodity offered for entry, the importer of record is required to provide the following data set in ACE at the time of entry for each entry containing the species or species groups listed under paragraph (a) of this section:



(1) Information on the entity(ies) harvesting or producing the fish: Name and flag state of harvesting vessel(s) and evidence of authorization; Unique vessel identifier(s) (if available); Type(s) of fishing gear; Name(s) of farm or aquaculture facility.

(2) Information on the fish that was harvested and processed: Species of fish (scientific name, acceptable market name, and ASFIS number); Product description(s); Name of product(s); Quantity and/or weight of the product(s).

(3) Information on where and when the fish were harvested and landed: Area(s) of wild-capture or aquaculture location; Date(s) of harvest or trip(s); Location of aquaculture facility; Point(s) of first landing; Date(s) of first landing; Name of entity(ies) (processor, dealer, vessel) to which fish was landed.. Some entries may comprise products from more than one harvest event and each event relevant to the shipment must be documented.

(4) The NMFS-issued IFTP number for the importer of record.

(c) The importer of record, either directly or through an entry filer, is required to submit the data under paragraph (b) of this section through ACE as a message set and/or image files in conformance with the procedures and formats prescribed by NMFS and Customs and Border Protection and made available at: <http://www.cbp.gov/trade/ace/catair>.

(d) Import shipments of fish or fish products subject to this program may be selected for inspection and/or the information or records supporting entry may be selected for audit, on a pre- or post- release basis, in order to verify the information submitted at entry.

(e) In addition to the entry recordkeeping requirements specified at 19 CFR part16, the importer of record is required to maintain records containing information on the chain of custody of the fish or fish products sufficient to trace the fish or fish product from point of entry into U.S. commerce to the point of harvest, including information that identifies each custodian of the fish

or fish product (such as any transshipper, processor, storage facility or distributor). Such records may include widely used commercial documents such as declarations by the harvesting/carrier vessels or bills of lading. Regardless of whether data is reported at entry or maintained by the importer, the importer must retain records in electronic or paper format under the recordkeeping requirements specified in §300.323.

5. Revise redesignated § 300.325, proposed to be added December 29, 2015, (80 FR 81251), as § 300.324, to read as follows:

**§300.325 Prohibitions.**

In addition to the prohibitions specified in § 300.4, § 300.117, § 300.189, § 600.725 and § 635.71 of this title, it is unlawful for any person subject to the jurisdiction of the United States to:

(a) violate any provision of this subpart, or any permit issued under this subpart.

(b) Import species listed in § 300.324(a) without a valid IFTP or without submitting complete and accurate information as required under § 300.324(b)-(c).

**50 CFR Chapter VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE**

**Part 600—MAGNUSON-STEVENSON ACT PROVISIONS**

6. The authority citation for part 600 continues to read as follows:

**Authority:** 5 USC 561 and 16 USC 1801 *et seq.*

7. In § 600.725, revise paragraph (a) to read as follows:

**§600.725 General prohibitions.**

\* \* \* \* \*

(a) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import, export or re-export, any fish or parts thereof taken or retained in violation of the Magnuson-Stevens Act or any other statute administered by NOAA or any regulation or permit issued there under, or import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation, or any treaty or in contravention of binding conservation measure adopted by an international agreement or organization to which the United States is a party.

\* \* \* \* \*

[FR Doc. 2016-02216 Filed: 2/4/2016 8:45 am; Publication Date: 2/5/2016]